



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

August 4, 2015

Ms. Victoria D. Honey
Assistant City Attorney
Office of the City Attorney
City of Fort Worth
1000 Throckmorton Street, 3rd Floor
Fort Worth, Texas 76102

OR2015-16002

Dear Ms. Honey:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 574127 (Fort Worth PIR No. W042771).

The City of Fort Worth (the "city") received a request for information related to a specified incident, to include the 9-1-1 audio recording associated with the incident. We also understand the city will withhold certain marked information pursuant to Open Records Letter No. 2011-15641 (2011).¹ You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses section 58.007 of the Family Code, which provides in pertinent part, as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise,

¹Open Records Letter No. 2011-15641 is a previous determination issued to the city authorizing the city to withhold the originating telephone numbers of 9-1-1 callers furnished to the city by a service supplier established in accordance with chapter 772 of the Health and Safety Code under section 552.101 of the Government Code in conjunction with section 772.218 of the Health and Safety Code without requesting a decision from this office. *See* Open Records Decision No. 673 (2001) (listing elements of second type of previous determination under section 552.301(a) of the Government Code).

concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapters B, D, and E.

Id. § 58.007(c). You state the submitted information is confidential under section 58.007. For purposes of section 58.007(c), “child” means a person who is ten years of age or older and under seventeen years of age at the time of the conduct. *See id.* § 51.02(2). The information at issue possibly involves delinquent conduct or conduct indicating a need for supervision that occurred after September 1, 1997, and contains the identifying information of an individual who may have been a juvenile offender. However, in this instance, we are unable to definitively determine the age of the suspect. It does not appear any of the exceptions to confidentiality under section 58.007 apply in this instance. Therefore, to the extent the individual suspected of the conduct at issue was ten years of age or older and under seventeen years of age at the time of the alleged conduct, the city must withhold the submitted information under section 552.101 in conjunction with section 58.007(c). To the extent the individual suspected of the conduct at issue was not ten years of age or older and under seventeen years of age at the time of the conduct, the submitted information is not confidential under section 58.007(c) and the city may not withhold the information on that basis.

Section 552.101 also encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). Upon review, we find some of the submitted information satisfies the standard articulated by the Texas Supreme Court in *Industrial Foundation*. Therefore, the city must withhold this information, which you have marked, under section 552.101 of the Government Code in conjunction with common-law privacy.

You have marked information you seek to withhold under section 552.130 of the Government Code, which provides information relating to a motor vehicle operator's or driver's license or permit, a motor vehicle title or registration, or a personal identification document issued by an agency of Texas or another state or country is excepted from public release.² *See* Gov't Code § 552.130(a). Upon review, the city must withhold the motor vehicle record information you have marked, as well as the additional information we have marked, under section 552.130 of the Government Code.

In summary, to the extent the individual suspected of the conduct at issue was ten years of age or older and under seventeen years of age at the time of the alleged conduct, the city must withhold the submitted information under section 552.101 in conjunction with section 58.007(c). To the extent the individual suspected of the conduct at issue was not ten years of age or older and under seventeen years of age at the time of the conduct, the city must 1) withhold the information you have marked under section 552.101 of the Government Code in conjunction with common-law privacy; 2) withhold the information you have marked, and the additional information we have marked, under section 552.130 of the Government Code; and 3) release the remaining information.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "JB IV" with a stylized flourish underneath.

Joseph Behnke
Assistant Attorney General
Open Records Division

JB/som

²Section 552.130(c) of the Government Code allows a governmental body to redact the information described in section 552.130(a) without the necessity of seeking a decision from the attorney general. *See* Gov't Code § 552.130(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.130(e). *See id.* § 552.130(d), (e).

Ref: ID# 574127

Enc. Submitted documents

c: Requestor
(w/o enclosures)